

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3244 of 1996

to

FIRST APPEALNo 3284 of 1996

with Civil Applications Nos.1788 of 1997 to 1828 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not?

No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

No

5. Whether it is to be circulated to the Civil Judge?

No

STATE OF GUJARAT

Versus

JETHABHAI BHULABHAI HARIJAN

Appearance:

Mr.P.G. Desai, GOVERNMENT PLEADER for appellant
MR MOHANBHAI DESAI for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and MR.JUSTICE M.H.KADRI
Date of decision: 21/10/97

COMMON ORAL JUDGMENT : (Per: M.H. Kadri, J.)

Admit. Learned advocate Mr. Desai waives service of notice of admission on behalf of respondents-original claimants. By the consent of the learned advocates for the parties, this group of First Appeals is taken up for final hearing.

As the common questions of law and facts are involved in this group of First Appeals, they are disposed of by the common judgment.

Appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), read with Section 96 of the Code of Civil Procedure, 1908, challenging the common judgment and award dated August 1, 1995, passed by the learned Second Joint District Judge, Mehsana, in the group of Land Reference Cases Nos. 332/89 to 365/89 and 349/94 to 356/94, by which the reference court determined the market price of the acquired lands of the respondents-original claimants, situated at village Japuriya, by dividing them into three categories, and awarding compensation at the rate of Rs.70,000/- per Hectare for Quari land; Rs.60,000/- per Hectare for irrigated land, and Rs.30,000/- per Hectar for non-irrigated land.

The Deputy Collector and Special Land Acquisition Officer, Sipu Canal Scheme, Palanpur, published notification under Section 4(1) of the Act on May 16, 1980, for acquiring the lands situated in the sim of village Jaspuriya for Muketeshwar Reservoir Scheme. Notification under Section 6 of the Act was published on August 26, 1982. After serving notices under Section 9 of the Act, the Land Acquisition Officer, by his award dated May 2, 1985, awarded compensation at the rate of Rs.4500/- per Hectare for non-irrigated land, Rs.6500/per Hectare for irrigated land and Rs.7200/- per Hectare for Quari land.

The respondents-claimants, feeling aggrieved by the said award, filed applications under Section 18 of the Act for making reference to the District Court. The said applications were referred to the District Court, at

Mehsana, which were numbered as Land Acquisition Reference Nos. 332/89 to 365/89 and 349/94 to 356/94. The above stated land acquisition references came to be transferred to the court of the learned Joint District Judge, Mehsana. The reference court consolidated all the reference cases.

The claimants, in their applications, before the District Court, claimed that the Land Acquisition Officer had erred in dividing the lands into three categories without assigning any reasons therefor. The claimants contended that the acquired lands were Quari lands and, therefore, the compensation should be determined at Rs.75,000/- per Hectare. On behalf of the claimants, one Chodhari Kanchibhai Ramjibhai, who is the claimant of Land Reference Case No.348 of 1989, was examined. Deputy Collector, Jagdishchandra Chunilal Joshi, was also examined. As per the evidence of the claimant, the acquired lands of village Jasپuriya are situated on the bank of river Saraswati, and all the lands are Quari lands. The claimants' witness deposed that village Pandva is situated at a distance of 2 or 3 Kms. from village Jasپuriya. Lands of village Pandva came to be acquired for the said purpose, i.e, Mukeshwar Reservoir Scheme, for which the District Court, Banaskantha, had awarded compensation at the rate of Rs.60,000/- per Hectare for the irrigated land. The claimants' witness also made reference to acquisition of the lands of village Dhulana which were situated near village Jasپuriya. As per the evidence of the claimants, lands of village Dhulana were also acquired for the said purpose, i.e, Mukeshwar Reservoir Scheme.

The reference court, after appreciating the oral as well as documentary evidence, came to the conclusion that the acquired lands were situated on the bank of river Saraswati and the lands were very fertile. The claimants used to take three crops in a year because of irrigation facilities. The reference court relied upon the earlier award in Land Acquisition Reference Nos. 338/88 to 353/888, and determined the market price of the acquired lands of village Jasپuriya, at the rate of Rs.70,000/per Hectare for Quari land; Rs.60,000/- per Hectare for irrigated land and Rs.30,000/- per Hectar for non-irrigated land.

The learned Government Pleader has taken us through the entire evidence on record, and submitted that the reference court has erred in awarding enhanced compensation to the claimants. The submission of the learned Government Pleader for the appellant is devoid of

any merit. It is an admitted fact that the lands of the claimants were situated on the bank of river Saraswati. They were very fertile and the claimants used to take three crops in a year. Moreover, the lands of village Dhulana were acquired for public purpose, i.e., Mukeshwar Reservoir Scheme, in respect of which, notification under Section 4(1) was published on March 12, 1981, and the claimants were awarded compensation at the rate of Rs.5/- per sq.mtr by this Court in First Appeals Nos.872/96 to 888/96.

The learned advocates appearing for both the sides have placed on record the map showing situation of village Dhulana and village Jaspuriya. As per the map, village Dhulana is situated at the distance of about 2 k.m., from village Jaspuriya. Lands of both the villages are situated on the bank of river Saraswati. Fertility of the lands of both the villages is also similar. As per the decision of this Court dated March 20, 1997, in First Appeals Nos.872 of 1996 to 888 of 1996, compensation at the rate of Rs.5/- per sq.mtr was awarded in respect of the acquired lands of village Dhulana. Therefore, compensation for the lands of the claimants in the present references should also be determined at Rs.5/- per sq.mtr, i.e., Rs.50,000/- per Hectare. The evidence of the claimants as well as the acquiring body shows that the acquired lands were situated on the river bed of Saraswati and they were having high fertility and all the lands were irrigated and, therefore, the acquired lands should be treated as irrigated lands. The lands, which were subject matter in First Appeals before the Court, were also irrigated lands, and the market price was determined at Rs.5/- per sq.mtrs. and, therefore, in our opinion, the present acquired lands of village Jaspuriya should also be treated as irrigated lands and, instead of dividing into three categories, the market price of the acquired lands of village Jaspuriya should be determined at Rs.5/- per sq.mtr.

Taking into consideration the over all situation, it would be just and proper to determine uniform market price of the acquired land, treating all the acquired lands as irrigated lands, at the rate of Rs.5/- per sq.mtr.

Grant of statutory benefits to the claimants under Sections 23(1-A) and 23(2) of the Act and interest as per the provisions of Section 28 of the Act, is quite legal and proper and deserves to be confirmed.

In the result, the appeals are partly allowed. The common judgment and award dated August 1, 1995, passed by the learned Second Joint District Judge, Mehsana, in the

group of Land Reference Cases Nos. 332/89 to 365/89 and 349/94 to 356/94, is modified to the extent that the respondents-claimants shall be entitled to uniform compensation of the acquired lands of village Jaspuriya, at the rate of Rs.5/- per sq.mtrs, with statutory benefits under Sections 23(1-A) and 23(2) of the Act and interest as per the provisions of Section 28 of the Act. There shall be no order as to costs. Since the appeals are finally disposed as stated above, the civil applications do not survive and are disposed of accordingly. However, the appellant is directed to deposit the amount of compensation in the Reference Court within eight weeks from the date of receipt of the writ.

(swamy)